

AMENDED IN ASSEMBLY APRIL 18, 2016

AMENDED IN ASSEMBLY MARCH 30, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2249

**Introduced by Assembly Members Cooley, Bigelow, and Gray
(Coauthors: Assembly Members Achadjian, Bloom, Brown,
Dababneh, Dodd, Eggman, Cristina Garcia, Gipson, Obernolte,
Olsen, Patterson, Salas, and Wagner)**

February 18, 2016

An act to *amend Sections 5080.05 and 5080.18 of, and to add Section 5080.22 to*, the Public Resources Code, relating to state parks.

LEGISLATIVE COUNSEL'S DIGEST

AB 2249, as amended, Cooley. State parks.

Existing law establishes the Department of Parks and Recreation and vests the department with the control of the state park system. Existing law authorizes the Director of Parks and Recreation to negotiate or renegotiate a concession contract within state parks if specified conditions exist, and generally requires that a concession contract within state parks for a period of more than 2 years be awarded to the best responsible bidder.

This bill would modify the definition of a best responsible bidder to include that the bidder, among other things, will operate the concession in a manner that protects the state's trademark and service mark interest in the names associated with a state park venue and its historical, cultural, and recreational resources.

~~This bill~~ *bill, commencing January 1, 2017, would prohibit a concession contract from being construed to provide providing a*

contracting party with, or serve as a basis for a legal claim or assertion that the contracting party has, with a trademark right or other financial or ownership or service mark interest in the name or names associated with a state park venue, venue, or its historical, cultural, or recreational resources, and would prohibit a concession contract from serving as the basis for any legal claim that the contracting party has that interest. The bill would declare that these provisions do not constitute a change in, but are declaratory of, existing law. The bill would prohibit a bidder who makes that legal claim or ~~assertion~~ assertion, and a bidder who a court has determined has made that legal claim or assertion with respect to a state or federal park venue without reasonable cause and in bad faith, from being awarded a concession contract within state parks, and ~~would~~ parks. The bill would require the department to adopt regulations to provide a bidder who is denied a contract award based on these reasons with written notice and an opportunity to rebut the basis of the contract denial at a formal hearing. The bill would render a provision of a concession contract that provides, or serves as a basis for a legal claim or assertion that the that, on and after January 1, 2017, provides a contracting party has, with a trademark right or other financial or ownership or service mark interest in the name or names associated with a state park venue venue, or its historical, cultural, or recreational resources, void and unenforceable.

This bill would require a concession contract to contain provisions requiring the concessionaire to forfeit the right to bid on future state park concession contracts if the concessionaire makes the above-described legal claim or assertion and requiring a concessionaire to be responsible for the state's attorney fees, costs, and expenses if the concessionaire files a federal or state trademark or service mark application for a trademark or service mark that incorporates or implies association with a state park venue, or its historical, cultural, or recreational resources, and the state files a successful opposition or cancellation of the trademark or service mark application.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:

1 (a) National, state, and regional parks serve the public interest,
2 benefit California, and very often reflect historic significance that
3 earlier generations of Californians have attached to these sites.

4 (b) Yosemite National Park, located in California, is one of the
5 most important and majestic parks in the United States and is filled
6 with historic landmarks built several decades ago. The historic
7 nature of these landmarks as California heirloom destinations is
8 demonstrated by topographic maps of the Yosemite Valley dating
9 back to the 1950s, which include these venues.

10 (c) The Ahwahnee Hotel was built in the 1920s with a backdrop
11 of Half Dome. It was placed on the National Register of Historic
12 Places in 1977.

13 (d) Curry Village, in the Yosemite Valley, is named after a San
14 Francisco Bay area couple who established a summer camp there
15 in 1899. It was placed on the National Register of Historic Places
16 in 1979.

17 (e) The Wawona Hotel is a complex of seven buildings in the
18 southwest corner of Yosemite National Park. The first building,
19 then named “Long White,” was originally constructed in 1876.
20 The main hotel building originally opened in 1879. It was placed
21 on the National Register of Historic Places in 1975.

22 (f) California state park venues are held in public trust for the
23 people of California. A legal claim by an individual to have a
24 trademark right to a name or names associated with a venue within
25 a state park derogates the interests of California and the shared
26 history of Californians, and it is indicative of a lack of the
27 individual’s fitness to serve as a steward of the state’s cherished
28 cultural heritage and places.

29 (g) An agreement entered into by any California state agency
30 that compromises the interests of Californians is “ultra vires” and
31 therefore beyond that agency’s legal authority to enter.

32 (h) It is important that the Legislature clarify that an awarded
33 concession contract within California’s state parks does not give
34 the concessionaire a trademark right to the name or names
35 associated with a state park venue. Furthermore, a concessionaire
36 who makes a legal claim to have that trademark right should be
37 disqualified from further consideration as a bidder.

38 *SEC. 2. Section 5080.05 of the Public Resources Code is*
39 *amended to read:*

1 5080.05. (a) Except as provided in Section 5080.16, all
2 contracts authorizing occupancy of any portion of the state park
3 system for a period of more than two years shall be awarded to
4 the best responsible bidder. ~~“Best~~

5 (b) *“Best responsible bidder” means the bidder, as determined*
6 *by specific standards established by the department, ~~which, that,~~*
7 *as determined by the department, will operate the concession (1)*
8 *consistent with the contract, (2) in a manner fully compatible with,*
9 *and complimentary to, the characteristics, features, and theme of*
10 *the unit in which the concession will be operated, ~~and~~ (3) in the*
11 *best interests of the state and ~~public.~~ public, and (4) in a manner*
12 *that protects the state’s trademark and service mark rights in the*
13 *names associated with a state park venue and its historical,*
14 *cultural, and recreational resources. For purposes of this section,*
15 *a bidder who would be subject to subdivision (b) of Section 5080.22*
16 *is not a best responsible bidder.*

17 SEC. 3. Section 5080.18 of the Public Resources Code is
18 amended to read:

19 5080.18. ~~All~~ A concession ~~contracts~~ contract entered into
20 pursuant to this article shall contain, but ~~are~~ is not limited to, all
21 of the following provisions:

22 (a) (1) The maximum term shall be 10 years, except that a term
23 of more than 10 years may be provided if the director determines
24 that the longer term is necessary to allow the concessionaire to
25 amortize improvements made by the concessionaire, to facilitate
26 the full utilization of a structure that is scheduled by the department
27 for replacement or redevelopment, or to serve the best interests of
28 the state. The term shall not exceed 20 years without specific
29 authorization by statute. Except as provided in Section 5080.16,
30 all renewals of concession contracts pursuant to this paragraph
31 shall be subject to competitive bidding requirements.

32 (2) The maximum term shall be 50 years if the concession
33 contract is for the construction, development, and operation of
34 multiple-unit lodging facilities equipped with full amenities,
35 including plumbing and electrical, that is anticipated to exceed an
36 initial cost of one million five hundred thousand dollars
37 (\$1,500,000) in capital improvements in order to begin operation.
38 The term for a concession contract described in this paragraph
39 shall not exceed 50 years without specific authorization by statute.
40 Except as provided in Section 5080.16, all renewals of concession

1 contracts pursuant to this paragraph shall be subject to competitive
2 bidding requirements.

3 (3) Notwithstanding paragraph (1), a concession agreement at
4 Will Rogers State Beach executed prior to December 31, 1997,
5 including, but not limited to, an agreement signed pursuant to
6 Section 25907 of the Government Code, may be extended to exceed
7 20 years in total length without specific authorization by statute,
8 upon approval by the director and pursuant to a determination by
9 the director that the longer term is necessary to allow the
10 concessionaire to amortize improvements made by the
11 concessionaire that are anticipated to exceed one million five
12 hundred thousand dollars (\$1,500,000) in capital improvements.
13 Any extensions granted pursuant to this paragraph shall not be for
14 more than 15 years.

15 (b) Every concessionaire shall submit to the department all sales
16 and use tax returns and, at the request of the department, provide
17 an annual financial statement prepared or audited by a certified
18 public accountant.

19 (c) Every concession shall be subject to audit by the department.

20 (d) A performance bond shall be obtained and maintained by
21 the concessionaire. In lieu of a bond, the concessionaire may
22 substitute a deposit of funds acceptable to the department. Interest
23 on the deposit shall accrue to the concessionaire.

24 (e) The concessionaire shall obtain and maintain in force at all
25 times a policy of liability insurance in an amount adequate for the
26 nature and extent of public usage of the concession and naming
27 the state as an additional insured.

28 (f) Any discrimination by the concessionaire or his or her agents
29 or employees against any person because of the marital status or
30 ancestry of that person or any characteristic listed or defined in
31 Section 11135 of the Government Code is prohibited.

32 (g) To be effective, any modification of the concession contract
33 shall be evidenced in writing.

34 (h) Whenever a concession contract is terminated for substantial
35 breach, there shall be no obligation on the part of the state to
36 purchase any improvements made by the concessionaire.

37 (i) *If a concessionaire makes a legal claim or assertion to have*
38 *a trademark or service mark interest in violation of subdivision*
39 *(a) of Section 5080.22, the concessionaire shall forfeit the right*

1 *to bid on future state park concession contracts to the extent*
2 *authorized by federal law.*

3 *(j) If a current or former concessionaire files a federal or state*
4 *trademark or service mark application for a trademark or service*
5 *mark that incorporates or implies an association with a state park*
6 *venue, or its historical, cultural, or recreational resources, and*
7 *the state files a successful opposition or cancellation with respect*
8 *to that trademark or service mark application, the concessionaire*
9 *shall be responsible for the state's attorney fees, costs, and*
10 *expenses associated with that opposition or cancellation.*

11 ~~SEC. 2.~~

12 ~~SEC. 4.~~ Section 5080.22 is added to the Public Resources Code,
13 to read:

14 5080.22. (a) ~~A~~ *Commencing January 1, 2017, a concession*
15 *contract awarded pursuant to Section 5080.05, 5080.16, or 5080.23*
16 *shall not be construed to provide the contracting party with, or*
17 *serve as a basis for any legal claim or assertion that the contracting*
18 *party has, with a trademark or other financial or ownership service*
19 *mark interest in the name or names associated with a state park*
20 ~~venue.~~ *venue, or its historical, cultural, or recreational resources,*
21 *and shall not serve as the basis for any legal claim that the*
22 *contracting party has that interest.*

23 *(b) To the extent consistent with federal law, a bidder shall not*
24 *be awarded a contract pursuant to Section 5080.05, 5080.16, or*
25 *5080.23 if either of the following apply:*

26 ~~(b) A~~

27 *(1) The bidder who makes has made a legal claim or assertion*
28 *to have a trademark or other financial or ownership service mark*
29 *interest described in violation of subdivision (a) shall not be*
30 *awarded a contract pursuant to Section 5080.05, 5080.16, or*
31 ~~5080.23.~~ *(a).*

32 *(2) A court has determined that the bidder has made a legal*
33 *claim or assertion to have a trademark or service mark interest*
34 *in the name or names associated with a state or federal park venue,*
35 *or its historical, cultural, or recreational resources, without*
36 *reasonable cause and in bad faith.*

37 *(c) The department shall adopt regulations to provide a bidder*
38 *who is denied a contract award based on subdivision (b) with*
39 *written notice of that denial and an opportunity to rebut the basis*
40 *for the contract denial at a formal hearing.*

1 ~~(e)~~

2 (d) A provision of a contract or other agreement entered into
3 pursuant to Section 5080.05, 5080.16, or 5080.23 that violates
4 subdivision (a) shall be void and unenforceable.

5 (e) *This section shall not be construed to impact a contracting*
6 *party's valid trademark or service mark rights that were held*
7 *before the concession contract was awarded. Subdivision (a) does*
8 *not constitute a change in, but is declaratory of, existing law.*

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